



Montana Environmental Trust Group, LLC
Trustee of the Montana Environmental Custodial Trust
PO Box 1230, East Helena, Montana 59635
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**ENVIRONMENTAL
PROTECTION AGENCY**

OCT 24 2011

MONTANA OFFICE

October 20, 2011

Betsy Burns
RCRA Project Officer
EPA Region VIII
Montana Office
10 West 15th St., Suite 3200
Helena, MT 59626

RE: Consent Decree Civil Action No. CV 98-3-H-CCL East Helena Site
Work Performed in September 2011; Progress Report

Dear Betsy:

On May 5, 1998, ASARCO and the United States Environmental Protection Agency ("EPA") entered into a Consent Decree (the "Decree") to further the objectives of the Resource Conservation and Recovery Act ("RCRA") and the Clean Water Act ("CWA"). On December 9, 2009, the Montana Environmental Custodial Trust (the "Custodial Trust") was established as part of the larger ASARCO bankruptcy settlement agreement to provide operational, remediation and revitalization activities at the Montana Sites, which include the East Helena Smelter. The United States and the State of Montana are the two designated beneficiaries of the Custodial Trust.

Pursuant to the Settlement Agreement, a motion to reopen the Decree and substitute the Custodial Trust for ASARCO was granted by the US Federal District Court in January 2010. As of the date of this report, EPA, DOJ and the Custodial Trust are in the process of finalizing a First Modification to the Decree that will conform to the

terms of the Settlement Agreement. The Custodial Trust submits this progress report under the Decree subject to and pending the finalization of the First Modification to the Decree. Nothing herein, or in the substitution, should be interpreted or construed to constitute an unqualified acceptance of the terms of the Decree by the Custodial Trust or a waiver or release of its right to a modification of the Decree consistent with the Settlement Agreement. The Custodial Trust reserves all rights to object to those parts of the Decree that it reasonably believes are inconsistent with the Settlement Agreement. As with this report, future progress reports prescribed by the Decree, as so amended, will be submitted to EPA by the Custodial Trust.

Section XII of the Decree (Reporting: Corrective Action) requires submittal of certified monthly progress reports to EPA to describe the actions taken to achieve compliance with the Decree. The following describes those activities that have occurred or are related to activities that took place during September 2011. As to any actions performed by ASARCO, the Custodial Trust's predecessor-in-interest, the descriptions are based on information and belief only.

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SECTION 1. DESCRIPTION OF ACTIVITIES FOR SEPTEMBER 2011

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Draft Phase II RFI	Hydrometrics / GSI	METG provided the draft Phase II RFI to the Beneficiaries on May 20 th for their review and comment.	No data submittal	No problems encountered	90%
2011 Field Sampling and Analysis Plan (FSAP)	Hydrometrics	<ol style="list-style-type: none"> 1. 2011 FSAP third quarter monitoring activities continued in September. The monitoring activities include flow and stage measurements on 22 Prickly Pear Creek Sites; 11 pond and ditch locations; and water levels on 128 monitoring well locations. 2. The Custodial Trust reviewed the status of residential well sampling and other East Helena activities with the Lewis & Clark County Water Quality Protection District on September 16th. 3. Hydrometrics collected water level data and a water quality sample from damaged monitoring well EH-143 located on Burnham property. Gary Burnham is working on repairs to the damaged well. 	Continuous and ongoing updates to the Site Database	No problems encountered	100% of 3 rd quarter
Groundwater and Surface Water Monitoring	Hydrometrics	The Custodial Trust met with Hydrometrics on September 19 th to review groundwater and surface water monitoring, conceptual site models (CSMs), South Plant Hydraulic Control support, as well as staffing and communications.	No data submittal	No problems encountered	100%
Data Management Plan (DMP) and Quality Assurance Project Plan (QAPP)	Hydrometrics	EPA requested formal procedures be developed to review and verify all data entered into the database. On June 2 nd , Hydrometrics Contract Modification #3 was executed to revise and update the DMP and addend the QAPP.	Revised DMP and QAPP were completed by August 12 th	No problems encountered	85%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Corrective Measures Study (CMS)	CH2M-Hill	<ol style="list-style-type: none"> 1. The Custodial Trust, the EPA and CH2MHill reviewed the CMS team organization, work priorities for 2012 and a potential statement of qualification (SOQ) process for selection of a consultant to develop the East Helena numerical groundwater flow model and to provide additional hydrogeologic support. First draft was completed by September 30, 2011 and distributed to the Lead Agency. 2. The Custodial Trust met with the EPA, and MDOJ on September 21st to discuss CMS activities planned for the remainder of 2011 and projected for 2012 to support upcoming budget forecasting activities. 	No data submittal	No problems encountered	75%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
South Plant Hydraulic Control (SPHC)	Hydrometrics, Pioneer Technical Services, and Morrison-Maierle, Inc.	<ol style="list-style-type: none"> 1. The Custodial Trust executed the scope of work on September 20th for CH2MHill, Pioneer Technical Services (PTS) and Morrison-Maierle, Inc. (MMI) to proceed with wetlands delineation and other natural resource permitting activities required to support the SPHC IM. Wetlands delineation work and a preliminary reconnaissance of Upper Lake, Lower Lake and Prickly Pear Creek began on September 28th. 2. Hydrometrics continued work on the development and implementation of the Upper Lake aquifer test for the SPHC IM, which should begin by the end of October. 3. The Custodial Trust, the EPA, MDEQ and MDOJ planned host briefing sessions and site tours to key stakeholders, state agencies and state officials for the SPHC IM on October 11th and 12th. 	Work Plans for the PTS and MMI work were received and approved by the Trust	No problems encountered	30%
Baseline Ecological Risk Assessment (BERA)	Gradient	The Custodial Trust and Gradient reviewed outstanding issues related to the final BERA on September 27 th . Based on this discussion, the Custodial Trust will follow-up with the EPA and USFWS to confirm potential exposure scenarios to birds and cattle on agricultural lands are properly addressed. Arrangements have been made to reimburse the USFWS for the cost for bird egg analysis.	No data submittal	No problems encountered	90%
Human Health Risk Assessment (HHRA)	Exponent/ CH2M-Hill	Hydrometrics provided CH2MHill with all current East Helena data required to finalize the Human Health Risk Assessment.	No data submittal	No problems encountered	85%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Consent Decree Modification	METG/DOJ	The final first modification to the 1998 Consent Decree is circulating for final signature within the USDOJ. A revised property map excluding Parcel #5 was provided to USDOJ.	Revised parcel map	No problems encountered	95%
Groundwater Technical Working Group (TWG) – Groundwater Model Work Plan	METG/EPA/MDEQ/MDOJ	The Groundwater Model and TWG will be delayed until the South Plant Water Balance and the Site Conceptual Models are completed later this winter.	No data submittal	No problems encountered	- %
Regulatory Compliance	METG	<ol style="list-style-type: none"> 1. The Custodial Trust opened CAMU#2 on September 26, 2011 to inspect contents that were deposited on December 8, 2010. A limited number of documents that were not authorized for disposal were recovered. This activity was managed by Hydrometrics and observed by the EPA. 2. The Custodial Trust submitted a request to the EPA for permission to dispose of 18 roll-offs (approximately 34 cubic yards) of hazardous waste; one cubic yard with the accumulation start date of July 11, 2011. 	Permit renewal application and permit fees submitted to MDEQ Water Protection Bureau	No problems encountered	100 %

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Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Health & Safety	METG	The Custodial Trust implemented interim measures to prevent contamination from potentially entering the Environmental Building pending finalization of the updated, site-wide Health and Safety Plan. The Custodial Trust submitted detailed comments and requested follow-up from the East Helena Health and Safety Consultant on September 28, 2011.	No data submittal	No problems encountered	50%
Water Treatment Plant	METG	<ol style="list-style-type: none"> 1. The HDS water treatment plant did not operate in September 2011. Approximately 500,000 gallons were held in storage at the end of the month. 2. Analytical results for HDS Sludge pressed during August passed TCLP, therefore can be disposed with City-County Sanitation. 3. Storm water collection system clean-out was completed during the month of September. Analytical results and process knowledge showed samples to be lead contaminated. 	DMR for August 2011 submitted to MDEQ	DMR submitted on October 5, 2011	Ongoing
Personnel and Office Operations	METG	<p>The Custodial Trust continues to identify qualified candidates to provide technical and other support for East Helena personnel working on the CMS, FSAP and the East Helena Cleanup Budget.</p> <p>The resume of Garrett Thompson was provided to the Lead Agency with the request to approve his hiring through A2Z in general support of site operations and remedial activities. EPA approved of his addition.</p>	Staffing request	No problems encountered	- %

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Financial Affairs	METG	<ol style="list-style-type: none"> 1. The Custodial Trust met with Galusha, Higgins & Galusha on September 20, 2011 to finalize plans to proceed with new protocols and procedures for processing invoices, preparing reports and assisting with budget forecast activities. 2. On September 21, 2011, the EPA approved the Custodial Trust's request for approval to reallocate level two cost center funds for II.J. (Interim Measures) for the approved 2011 East Helena Cleanup Budget to more accurately reflect actual and projected activities for Interim Measures in 2011. 3. On September 21, 2011, the custodial Trust submitted a draft request for the EPA to approve an increase in the 2011 approved budget for Cost Center II.O. (Redevelopment) to reflect actual costs for work to be performed by CTA and other East Helena personnel and contractors to support the redevelopment studies and plans. 	No data submittal	No problems encountered	- %

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Property Use/ Development	METG	<ol style="list-style-type: none"> Contractors for slag crushing prepared for mobilization of crushing equipment to the East Helena Facility. The Custodial Trust is working with H&H Metals, the Site Health & Safety Consultant and the contractor to complete required medical testing and provide required health & safety training certifications. The Custodial Trust and CTA/MDX finalized the scope of work for the redevelopment planning studies. A kick-off meeting with the Beneficiaries of the Custodial Trust was held in Helena on September 20, 2011 and site tours were held on September 21 -22, 2011. Counsel to the Custodial Trust and CTA/MXD are working to resolve outstanding contract issues related to insurance requirements. Zanetti Brothers continues CERCLA work in East Helena. MBAC advised the Custodial Trust that the City of East Helena and Lewis & Clark County entered into a contract with Reis Surveyors to perform the full instrument survey of the parcels slated for transfer from the Custodial Trust to the City and County. Foster and Dobler agricultural leases were finalized and are being reviewed by the Custodial Trust prior to submittal to the Beneficiaries for review and approval. The Beattie grazing lease is under review by the Custodial Trust to ensure consistency with the terms of the current Burnham access agreement. 	No data submittal	No problems encountered	- %

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Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Community & Local Meetings	METG	1. LEAP & ICs meetings 2. East Helena City Council Meeting 3. Lewis and Clark County WQPD meeting 4. Beneficiary Meeting 5. Lewis and Clark County Flood Mitigation Meeting	No data submittal	No problems encountered	-

SECTION 2. ACTIVITIES SCHEDULED FOR OCTOBER 2011

Task	Performing Entity	Description
Field Sampling and Analysis Plan (FSAP)	Hydrometrics	Begin fourth quarter field sampling events, which include surface water and water levels from select monitoring wells.
Corrective Measures Study (CMS)	CH2M-Hill	<ul style="list-style-type: none"> Draft CMS work plan review with EPA the week of October 3, 2011. CH2MHill to review site-wide health and safety and the SSHASP for the wetlands delineation fieldwork. SPHC interim measure briefings and site tours October 11 & 12, 2011.
Property Use / Development	East Helena	H&H Metals to begin slag crushing/loading the week of October 3, 2011.
Monthly inspections of six temporary cap areas	TS Consulting	Monthly inspections of the temporary cap areas will continue in October 2011. Northwest Linings is scheduled to repair the temporary cap liners on October 26, 2011.
Hazardous Waste Disposal	METG/TS Consulting/Hydrometrics	Approximately 34 cubic yards of hazardous material from the storm water collection system clean out will be deposited into the CAMU #2 by October 9, 2011. Northwest Linings is scheduled to close the CAMU #2 liner on October 26, 2011.
CAMU Inspections	TS Consulting/METG	Routine inspections of CAMU #1 (monthly) and CAMU #2 (weekly) will continue in October 2011.
Water Treatment Plant	METG	Operate the water treatment plant beginning October 9, 2011. Submit monthly DMR for Storm Water MPDES.
Metal Recycling	METG	METG to recommend metal recycling company from bids provided in September.
Plant Maintenance Tasks	TS Consulting/METG	<p>Various tasks to be completed include:</p> <ul style="list-style-type: none"> Run the water treatment plant beginning October 9, 2011. Complete piping and valve repair between Rodeo and Thornock Tanks. Routine maintenance issues.
LEAP & ICs Meeting	L&C County/EPA	No meeting scheduled at this time.
Beneficiaries Meeting	EPA/MDEQ/MDOJ/METG	Monthly beneficiaries meeting October 20, 2011.

Section 3. Describe and estimate the percentage of studies completed.

No projects or studies were completed in September 2011. A complete listing of projects completed in 2011 will be reported in the January 2012 Progress Report.

Section 4. Describe actions being taken to address problems.

There were no actions required to address problems associated with the Decree.

Section 5. Identify changes in key personnel during the period.

Alicia Voss was released as a consultant to the Custodial Trust on September 8, 2011.

Section 6. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.

The Custodial Trust received funds for Environmental Actions earmarked for site clean-up in connection with the ASARCO bankruptcy settlement. The Custodial Trust deposited the funds in a segregated East Helena Clean-up account and is investing and managing the funds in accordance with the provisions of the Settlement Agreement. Issues related to the CAMU trust are stilling being resolved between the beneficiaries and ASARCO.

Please do not hesitate to contact me or Cynthia Brooks if you have any questions.

Sincerely,
Montana Environmental Trust Group, LLC,
Trustee of the Montana Environmental Custodial Trust
By: Greenfield Environmental Trust Group, Inc., Member

By: 

Name: Marc Weinreich

Title: Vice-President

cc: Denise Kirkpatrick - MDEQ
Randy Breeden - EPA 8
Chuck Figur - EPA 8

CERTIFICATION
PURSUANT TO U.S. v ASARCO INCORPORATED
(CV-98-3-H-CCL, USDC, D. Montana)

"I certify under penalty of law that this document and all attachments, were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

By: Montana Environmental Trust Group, LLC,
Trustee of the Montana Environmental Custodial Trust
By: Greenfield Environmental Trust Group, Inc., Member

By: 
Name: Marc Weinreich
Title: Vice-President